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5 Attorney for Defendant:

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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE WESTERN DISTRICT OF WASHINGTON**  
10 **AT SEATTLE**

11 **UNITED STATES OF AMERICA,**

Plaintiff,

v.

13 **CHRISTOPHER MAXWELL,**

Defendant,

Crim. S- 06-0042MJP

**DEFENDANT'S SENTENCING  
MEMORANDUM**

16 **PRELIMINARY MATTERS**

17 This sentencing memorandum presents two consistent sentencing considerations for the  
18 court. First, the defendant's intent at the time of the commission of the offense and  
19 second a request that the court factor into its sentence the aberrant nature of the  
20 defendant's behavior. Until earlier this week the latter request would have taken the  
21 form of a motion of downward departure; however the Ninth Circuit holding in  
22 *Mohamed* makes such a motion inappropriate.

23 **DISCUSSION**

24 there is no doubt that the defendant in this matter had the intent to create the "Bot" and  
25 to launch it, but there is no evidence that he had any intent to cause the specific harm  
26 which occurred as a result. This distinction in intents is not a defense to the crime but  
27 it is an important component of the defendant's character for purposes of 18 USC §  
28 3553(a).

1 In fact everything we know about the defendant tells us that if he had any inclination of  
2 what was taking place he would have acted to stop it. An examination of the defendant's  
3 exact intent is necessary to understand the nature and character of the defendant in  
4 formulating a reasonable sentence.

5 Through this memorandum we are asking the court to consider the aberrant nature of this  
6 conduct. Until the defendant became involved with his co-conspirators and committed  
7 this offense he had led a completely law abiding life. In fact he went above what would  
8 be just law abiding by being a young man who had done well in school, continued on to  
9 college with a well defined career path, was active in his church and worked full-time.  
10 Much can be learned about the defendant's character by close examination of the many  
11 letter so support which have been written on his behalf.

12 A consideration of the defendant's aberrant behavior is not precluded by the terms of  
13 USSG § 5K2.20 as the guidelines are no longer binding on the court and only advisory.  
14 Further, the 2003 restriction of the application of an aberrant behavior departure was a  
15 result of an act of Congress (The Protect Act) and not the Sentencing Commission. Post  
16 *Booker* the Commission's view of the guideline is even more important.

17 A final component of 18 USC § 3553(a) which needs to be addressed is that of disparate  
18 sentence. The court must consider the sentence imposed on co-defendants similarly  
19 situated. While not technically co-defendants in this case there were two co-conspirators  
20 who ere identically situated except they were minors and the government apparently  
21 determined not to put forth the extra effort to make them true co-defendants. What  
22 sentences these two individual's will receive remains a mystery. I was provided names  
23 and numbers for their attorneys however when I called asking only their view of the  
24 probable sentence the believed their respective client would receive one refused to tell  
25 me based on attorney client privilege and the other refused to return my call. I inquired  
26 of the attorney who did speak to me if te was declining to provide this information based  
27 on some official request. He somehow believed that this too was subject to the attorney  
28 -client privilege.

1 From the inception of this case it has appeared that the government wants a poster boy  
2 for this offense and has selected Mr. Maxwell to receive that privilege. To single out one  
3 individual to receive more significant punishment in the vague hope of “sending a  
4 message” is neither reasonable nor an appropriate dispensation of justice.

5 In view of the defendant’ complete lack of a criminal past, his exemplary life style, his  
6 strong base of support and the zero likelihood of recidivism a prison sentence is  
7 unjustified. A reasonable sentence would be one of probation, a period of home  
8 confinement and a substantial amount of unpaid community service. Toward that end  
9 the defendant has contact a hospital in his community as an appropriate recipient of any  
10 community service.

11 Dated: August 20, 2006

12 Respectfully submitted,

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14 / s / Steven D. Bauer

15 Steven D. Bauer  
16 Attorney for Defendant

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